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Situation of human rights in Belarus

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, submitted in accordance with Human Rights Council resolution 20/13.

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Report of the Special Rapporteur on the situation of human rights in Belarus

Summary

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus to the General Assembly at its sixty-eighth session, in accordance with Human Rights Council resolution 20/13.

In the report, the Special Rapporteur focuses on human rights in electoral processes in Belarus. He explores the patterns of purposeful and systemic human rights violations leading to Belarus being the only country in Europe that in the past decade has had no opposition members elected to its parliament.

The Special Rapporteur makes recommendations to improve the human rights situation in Belarus in line with its international obligations.

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I. Introduction

A. Background

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the Human Rights Council in its resolution 20/13. The Special Rapporteur assumed his functions on 1 November 2012. On 13 June 2013, in resolution 23/15, the Council extended the mandate of the Special Rapporteur for one year.

2. In his first report to the Human Rights Council (A/HRC/23/52), the Special Rapporteur described the prevailing situation of human rights in Belarus since the establishment of the mandate and included information received up to 31 March 2013.

3. Through consultations held since November 2012, the Special Rapporteur found only scant progress in the implementation of recommendations made by the United Nations High Commissioner for Human Rights in her report to the Human Rights Council in 2012 (A/HRC/23/52, paras. 113-118). He concluded that the system of governance — decrees, legislation, policy and practice — was impeding the realization of the constitutional guarantees for the protection of human rights for all those living in Belarus. The situation of human rights — precarious in general, grave in certain areas — was clearly affected by the domination of the executive branch over the legislative and the judiciary.

4. In the report, the Special Rapporteur documented systemic and systematic violations of human rights, especially in the areas of due process, fair trial and torture, as well as freedoms of opinion and expression, peaceful assembly and association. He noted that the limitations imposed on those freedoms were further hampering the free exercise of other civil, cultural, economic, political and social rights.

5. The situation for those deprived of their liberty, in particular well-known political prisoners, is of deep concern.

B. Methodology

6. Since taking up his mandate, the Special Rapporteur has stressed his commitment to independence, impartiality and objectivity and to cooperation with all stakeholders as the guiding principles for his work. In particular, he has sought to enlist the cooperation of the Government of Belarus. The Special Rapporteur has officially addressed the Permanent Representative of Belarus to the United Nations Office at Geneva or, through him, the Minister for Foreign Affairs, to request meetings and an invitation to visit Belarus.[1] No reply to any of these communications has been received to date.

7. The Special Rapporteur regrets that the Government does not avail itself of this opportunity. He again reiterates his readiness to constructively engage with the Government, beginning with issues that both acknowledge as human rights concerns.

[1] The most recent request for an official visit to Belarus was made in July 2013.

8. The Special Rapporteur has pursued wherever possible the collection of information from primary sources. He is grateful for the extensive cooperation that he has enjoyed with many stakeholders living in Belarus. Since assuming his mandate, he has undertaken four trips, between November 2012 and July 2013, to Lithuania and Ukraine to meet a broad range of civil society representatives, experts and victims of human rights violations from Belarus, receiving first-hand information from them. In both States, he met representatives of their respective ministries of foreign affairs.

9. The Special Rapporteur stands ready to continue to offer his support to civil society, in accordance with his mandate, and acknowledges its commitment to the protection of human rights for all.

II. Elections and human rights

10. In the present report, the Special Rapporteur focuses on human rights in the context of electoral processes in Belarus.

11. In any country, elections are the focal act of the expression of public will, culminating in the appointment of legislators and the holders of the highest State positions. Elections are not simple administrative techniques; they are the strongest link between universal human rights and national democracy. The Universal Declaration of Human Rights (art. 21, para. 3) states that "the will of the people shall be the basis of the authority of government". Article 25 (b) of the International Covenant on Civil and Political Rights reiterates the overarching importance of genuine periodic elections "guaranteeing the free expression of the will of the electors".

12. It is this two-way relationship between human rights and elections that lends centrality to the human rights underlying electoral processes. The full realization of the right to elect and to be elected always depends on a number of relevant additional factors and general and specific sets of human rights. Such a prerequisite is the rule of law itself. Furthermore, both between elections and in the preparation of election cycles, authorities should ensure that citizens have, and the media is able to offer, pluralistic access to information about candidates and political profiles. Freedom of peaceful assembly and association is needed to ensure that citizens are free to attempt, publicly and collectively, to convince others to change their opinion. Non-discriminative campaign regulations; election administration and polling equipped by independent and impartial commissions; and the free movement of domestic and international observers are necessary to safeguard the right of any citizen to stand for election or vote without being subordinated to any "unreasonable restrictions" (art. 25 of the International Covenant on Civil and Political Rights) and without fearing retaliation for doing so. A fearless election atmosphere also depends on the availability of an effective and independent system of appeals and remedy, capable of democratically solving disputes that arise in the context of elections.

13. In Belarus since 1991, four presidential elections (1994, 2001, 2006 and 2010), five parliamentary elections (1995, 2000, 2004, 2008 and 2012) and five local elections (1995, 1999, 2003, 2007 and 2010) have been held. Of those observed by the Office for Democratic Institutions and Human Rights of the Organization for

Security and Cooperation in Europe (OSCE/ODIHR), none were considered free and fair.[2]

14. The state of election-related human rights is epitomized by the fact that, in the most recent parliamentary elections, held on 23 September 2012, none of the 110 seats went to any opposition candidates. Belarus today is the only State in Europe with a parliament without an opposition. This has invariably been the case since 2004, whether the opposition did or did not boycott the elections.

15. In 2012, some opposition parties and candidates decided to boycott the elections, citing procedural violations, media discrimination and the imprisonment of opposition activists.[3]

16. The refusal of the opposition to participate in the elections in 2012 was also motivated by the lingering legal effects of the crackdown against the peaceful demonstrators protesting against the observed irregularities in the aftermath of the presidential elections in 2010; the arrest and conviction of many prominent candidates, acknowledged as arbitrary by the Working Group on Arbitrary Detention (see A/HRC/WGAD/2011/13 and A/HRC/WGAD/2012/14), and the continuing incarceration of several of them (even at the time of the writing of the present report). In its turn, the experience of the presidential elections in 2010 fitted with the uninterrupted trend of the past 15 years. Elections have not been rights-based procedures serving the citizens to shape the future of Belarus, but have been transformed into tools used to maintain power. It is the recurring experience of Belarusians that candidates who might consider running an agenda not espousing the President's ideas are discouraged from running by regulatory or extralegal means, if not directly harassed or arrested. Those who used the opportunities earlier, just as in 2010, were severely targeted in the aftermath.

17. The subject of human rights in electoral processes was also identified by the Special Rapporteur as his theme for the present report for the following reasons:

(a) In the aftermath of the 2010 presidential elections, a severe deterioration in the human rights situation occurred, which then triggered Human Rights Council resolution 17/24, in which the Council requested the High Commissioner to monitor the human rights situation in Belarus, and resolution 20/13, by which the Council established the mandate of the Special Rapporteur;

(b) Within the first year of the mandate, parliamentary elections were held in 2012;

(c) Evidence from past elections in Belarus shows a pattern of increased human rights violations during the periods prior to and following elections and on election day itself;

(d) On 3 January 2013, a law on amendments to the Electoral Code was included in the legislative plan for 2013, approved by a presidential decree;[4]

(e) The next round of presidential elections is scheduled for 2015.

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[2] OSCE did not monitor local elections in Belarus.

[3] OSCE/ODIHR election observation mission, "Republic of Belarus, parliamentary elections, 23 September 2012, final report" (Warsaw, December 2012).

[4] See www.pravo.by/main.aspx?guid=3871&p0=P31300001&p1=1, p. 4.

18. The present report is therefore an opportunity for timely reflection and a call to the State authorities to jointly review legislation, policies and practices, in order to ensure a human rights environment for free, fair, genuine and meaningful elections. The Special Rapporteur suggests that the present report be read in conjunction with the report to the General Assembly at its sixty-eighth session of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/68/299), which addresses the freedoms of peaceful assembly and association in the context of elections. The two reports, being submitted at the same time to the Assembly, underscore the importance for States to uphold their obligations to promote and protect the freedoms of peaceful assembly and association in general and in particular during electoral processes. The full enjoyment of both these freedoms is itself indicative of the human rights situation in any country, being the pathway along which many other civil, cultural, economic, political and social rights are exercised.

III. Overview of elections and referendums since 1991

19. In 1991, Belarus became an independent sovereign State. On 15 March 1994, a new constitution was adopted by the Supreme Soviet[5] and Belarus became a presidential republic, although considerable powers remained with the Supreme Soviet.

Presidential elections of 1994

20. The first presidential elections were held on 23 June and 10 July 1994. Alyaksandr Lukashenka was elected President with 80.1 per cent of the vote in the second round (44.8 per cent in the first round). These elections are widely viewed as the most free and fair elections to have been held in the history of independent Belarus.

Referendum of 1996 (unopposed powers for the President)

21. Controversy between the Supreme Soviet and the President began almost immediately after the elections of 1994. A hunger strike by opposition deputies, led by Zianon Pazniak, began in April 1995, after the President stated that the referendum would be held regardless of the vote of parliament. Numerous breaches of the Constitution by the President in 1995 and 1996 resulted in an attempt by the parliament to impeach him. Viktar Hanchar, the Chair of the Central Election Commission, who was appointed by the parliament, was dismissed by the President for opposing the referendum.

22. On 24 November 1996, the referendum initiated by the President succeeded, thus amending the Constitution. A voter turnout of 84 per cent approved the changes proposed by the President. The one-chamber Supreme Soviet was replaced with a bicameral parliament: a National Assembly comprising a 110-seat House of Representatives and a 64-seat Council of the Republic. The parliament was deprived of the power to initiate referendums and changes to the Constitution and to elect members of the constitutional and supreme courts and the Prosecutor-General. The President was given the authority to issue decrees having the force of law. Since

[5] From 1990 to 1996, the Supreme Soviet functioned as a permanent parliament.

then, the parliament has not been organized along party lines; instead prospective parliamentarians have been hand-picked by the presidential administration from local elites. Ever since the referendum, observers have widely reported fraud designed to ensure that selected loyalists win seats.[6]

23. At the same time, fundamental freedoms in Belarus have deteriorated.[7] In 1999 and 2000, four prominent opponents of presidential absolutism disappeared, among them Viktar Hanchar and Yury Zakharanka, a former Minister of the Interior. Notwithstanding the handwritten testimony of the Chief of the Criminal Police, Gen. Mikalai Lapatsik, in which he named the alleged high-ranking perpetrators (see CCPR/C/104/D/1820/2008, para. 2.6), the investigation was terminated (see A/HRC/23/52, paras. 46-49).

Referendum of 2004 (elimination of the two-term limit for the President)

24. On 17 October 2004, a further referendum eliminated the rule that the President could not be elected for more than two terms. National and international experts criticized the decision to hold another referendum using popularity to loosen constitutional constraints.[8]

25. Several protesters were arrested before and after the referendum, with reports of opposition leaders being beaten by police.[9]

Presidential elections of 2001

26. The presidential elections of 2001 were the first to be contested following the 1996 referendum. The three candidates offered a genuine political choice, although restrictive campaign regulations barred voters from full information about the various alternatives. International observation teams found fundamental flaws in the electoral process, which were then echoed in the presidential elections in 2006 and 2010, including:

(a) A political regime aimed at blocking opposition;

(b) Executive structures, including presidential decrees, with extensive powers to arbitrarily change the electoral environment, without commensurate legislative controls;

(c) A legal framework that fails to ensure the independence of the election administration, the integrity of vote counting and the process for tabulating results;

(d) Lack of guarantees for control and counting of early votes;

(e) An election administration system that is overtly partisan and dependent on the executive branch of the Government both nationally and locally;

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[6] See, for example, www.chathamhouse.org/media/comment/view/185899.

[7] OSCE/ODIHR limited election observation mission, "Republic of Belarus, presidential election, 9 September 2001, final report" (Warsaw, October 2001), p. 3.

[8] See, for example, http://naviny.by/rubrics/politic/2004/09/09/ic_news_112_249668 and the opinion on the referendum of 17 October 2004 in Belarus adopted by the European Commission for Democracy through Law (Venice Commission), No. 314/2004 (Strasbourg, 2004).

[9] "Oppositionists rally in Minsk to protest referendum proposal, arrests reported", http://charter97.org/eng/news/2004/10/11/miting.

(f) A campaign environment organized to disadvantage the opposition candidates, in particular, State-led smear campaigns to intimidate opposition activists and domestic and international observers, and a lack of access for opposition candidates to the predominantly State-owned broadcasting media;

(g) Censorship of opposition and independent print media.

Presidential elections of 2006 and 2010

27. In 2006, 4 candidates were registered to contest the presidential election, while in 2010 there were 10 candidates. According to official results, Mr. Lukashenka won both elections, receiving a vote of 84 per cent and 79.6 per cent, respectively.

28. On both occasions, post-election protests were broken up by police force and key political figures and hundreds of individuals were arrested. A number of participants in what were termed "unsanctioned activities" were sentenced by the courts to administrative arrests and fines, while others, including the presidential candidates, faced criminal proceedings, mostly under the title of "mass disturbances". Moreover, the aftermath of both elections spilled over into a longer period with a prolonged deterioration in the human rights situation.

Parliamentary elections

29. Parliamentary elections generally draw less attention than presidential elections. This is explained partially by the fact that the Constitution of 1996 significantly limited parliamentary powers to the advantage of the executive branch. In addition, since 2004 and uniquely in Europe, there have been no opposition members elected to the parliament. Although a number of parties are registered, the political system in Belarus lacks political pluralism. Numerous legal restrictions, excessive control measures by the executive, as described herein, and the majoritarian system block the possibility of building a strong party political system.

IV. Legal framework

30. The Electoral Code was adopted on 11 February 2000 and subsequently amended in 2000, 2003, 2006, 2010 and 2011. Some of the amendments were deemed progressive by OSCE and other international observers.[10] It has also been stated, however, that the legal framework still does not fully comply with OSCE commitments and other international standards, and continues to contain serious shortcomings.[11]

31. Although article 101 of the Constitution permits the President to issue decrees in "instances of necessity and urgency", such decrees, as illustrated by decrees Nos. 8, 11 and 20, deny the intent of the constitutional provision when the President is also a candidate and the decrees affect the electoral process, in particular by restricting the rights of other participants in the process — namely political parties, potential candidates and public associations.[12]

[10] See, for example, www.osce.org/odihr/elections/69373.

[11] OSCE/ODIHR Election Observation Mission, "Republic of Belarus, presidential election, 19 December 2010, final report" (Warsaw, February 2011), p. 1.

[12] OSCE/ODIHR limited presidential election observation mission final report, 2001, p. 8.

32. The Special Rapporteur is concerned that, in many instances, the Electoral Code and other relevant legislation place overlapping limitations on the rights and practices essential for free and fair elections. Several of these interrelated limitations are documented herein. The abundance of multiple, arcane restrictions of the right to be elected, to vote freely, to freedom of expression, opinion, peaceful assembly and association and to an effective remedy, fair trial and due process shows that an environment has not been created to ensure genuine and meaningful electoral processes.

33. The Special Rapporteur has been informed that current Belarusian legislation could easily be amended to allow for free and fair elections. The question of more weighty concern is how the electoral process is managed. The pattern of centralized political guidance and tolerated fraud in counting and tabulating the results has been very consistent throughout all elections and is evolving. Underlying this pattern is the fact that, in Belarus, it is the prerogative of the executive branch, both nationally and locally, to select the very election commissions, whose task would be to guide the elections independently of the executive.

34. As a first legal remedy for the situation, OSCE, human rights defenders (e.g. the campaign Human Rights Defenders for Free Elections, a joint undertaking of the Human Rights Centre Viasna and the Belarusian Helsinki Committee) and the Belarusian opposition parties[13] invariably insist on formalizing the key preconditions for free and fair elections in the Electoral Code. Of them, two are of paramount importance:

(a) Guarantee of independence of election commissions, including through pluralistic composition;

(b) Transparent vote count, including a detailed procedure for full and open observation by election commission members and other stakeholders.

35. The Special Rapporteur is concerned that the current electoral reform process is lacking in transparency and public participation. On 28 December 2012, the political parties requested the Central Election Commission and the presidential administration to publish proposed draft amendments to the Electoral Code and hold consultations on them. On 7 February 2013, the "For Freedom" movement, the Belarusian Popular Front party, the "Tell the Truth" campaign, the Belarusian Left Party "Fair World" and the Belarusian Green Party submitted an alternative draft project of the Electoral Code amendments to the presidential administration, the National Centre of Legislative Activity, the Government and to both houses of the parliament.[14] The campaign Human Rights Defenders for Free Elections also drafted and submitted recommendations regarding amendments to the Electoral Code.[15]

36. These submissions notwithstanding, political parties and civil society have been excluded from the discussion on amendments to the Electoral Code, and their

[13] The "For Freedom" movement, the Belarusian Popular Front party, the "Tell the Truth" campaign, the Belarusian Left Party "Fair World" and the Belarusian Green Party.

[14] The project is available in Belarusian from http://narodny.org/?p=3548.

[15] Human rights defenders for free elections, "Election to the Chamber of Representatives of the National Assembly of Belarus of the 5th Convocation", final report, 23 September 2012, available from www.european-exchange.org/fileadmin/user_upload/Belarus_Parlamentswahlen_2012/Final_Report_Parliamentary_Elections_Belarus_2012.pdf.

text remains unavailable to the public. On 11 January 2013, the Chair of the Central Election Commission, Lidzia Yarmoshyna, stated in a letter sent to a group of petitioning parties and organizations that "a draft legal normative act can be brought to public discussion in accordance with the decision of a State organ (official) who has the authority to adopt (issue) legal normative acts" and that, "in accordance with the law, the Central Commission does not belong to such organs".[16]

37. A governmental meeting on 6 August once again demonstrated the lack of consultation in amending the Electoral Code. Information from the meeting did not disclose the topics to be amended in the legislation and the President stated that it would be good if the meeting in question were to be the last before the draft legislation was sent to the parliament.[17]

38. National law stipulates that the electoral process is to be consistent with the international obligations of Belarus. Article 8 of the Constitution states that generally accepted principles and norms of international law supersede national laws. In line with these commitments, in 2009 the amendments were submitted to OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission), which issued a joint opinion on them.[18] Since then, however, the Central Election Commission has refused to send any new draft amendments for review by these regional human rights expert bodies. The Commission has justified this by stating that Belarusian legislation does not envisage an expert assessment of a draft law by OSCE/ODIHR and the Venice Commission.

V. Human rights and the rule of law in electoral processes

A. Freedom of opinion and expression

39. The full enjoyment of the right to freedom of opinion and expression, including that of a media that is independent through pluralism, is essential ahead of elections. Articles 33 and 34 of the Constitution provide such guarantees, stating that "no monopolization of the mass media [and] no censorship shall be permitted".

40. The Human Rights Committee repeatedly found Belarus to be in violation of these rights (see CCPR/C/95/D/1553/2007, CCPR/C/87/D/1009/2001 and CCPR/C/85/D/1022/2001). In a number of cases, violations were found in conjunction with elections (see, for example, CCPR/C/105/D/1226/2003 and CCPR/C/95/D/1553/2007). Belarus has been asked by the Committee to "take steps to prevent similar violations in the future" (see, for example, CCPR/C/104/D/1772/2008). The Special Rapporteur reiterates his concern about the systematic dismissal by Belarus of the views of the Committee and its lack of response to those views, which violate the obligations of the State under the Optional Protocol to the International Covenant on Civil and Political Rights.

41. Article 5 of the Constitution stipulates that political parties and other public associations are to have the right to use the State mass media under the procedure determined by the law. In the major broadcast media during the presidential elections in 2010, however, the incumbent received considerable support, while

[16] See http://charter97.org/ru/news/2013/1/11/63846/.
[17] See www.interfax.by/news/belarus/135174.
[18] See www.osce.org/odihr/elections/belarus/68711.

other candidates were given neither an opportunity to present their views beyond the limited free space and time given to all candidates, nor were their campaigns covered as issues of political significance. Reports also indicate that in the State newspapers candidates are not given an equal proportion of free space. During presidential elections, the electoral campaign of the incumbent is published on the front page of newspapers, while those of other candidates are less visible and allocated less space and the latter are often accompanied by negative comments, which is not the case with that of the incumbent. Critical outlets, such as Belsat and Radio Racyja, cannot cover electoral processes from inside the country because their journalists are repeatedly denied accreditation.[19]

42. In the eyes of the Special Rapporteur, the repressive atmosphere experienced during earlier elections leads even independent media workers and journalists to exercise self-censorship, including by avoiding critical reporting about the policies of the Government or giving full coverage to critics.

43. Following the most recent presidential elections, in December 2010, independent journalists and media workers were detained, among them Natalia Radzina, Iryna Khalip, Dzmitry Bandarenka, Pavel Seviarynets, Siarhei Vazniak and Aliaksandr Fiaduta, and several of them reported serious violations of their procedural rights.[20] Pressure against Ms. Khalip continued after the end of the election cycle, including with reported threats against her by the Head of the Corrections Department of the Minsk City Police Directorate, Aliaksandr Kupchenia.[21]

44. On 10 January 2011, the Ministry of Information charged Avtoradio with disseminating information that allegedly contained public appeals to extremist activities. The incriminating phrase was the following statement, aired on Avtoradio, by presidential candidate Andrei Sannikau: "the fate of your country is not decided in the kitchen, it is sealed in the Square". The station appealed against the decision but was shut down nevertheless.[22]

45. In addition to their limited access to the media, opposition candidates are banned from publicly considering a boycott of an election.[23] The Human Rights Committee considered that advocating non-cooperation with an electoral exercise must be allowed for any person (see CCPR/C/81/D/927/2000).

46. The restrictions on communications at election time come with elevated protection for officials. In its resolution 22/6, the Human Rights Council unanimously called upon States to ensure that legal provisions did not prevent public officials from being held accountable. In Belarus, article 47 of the Electoral Code prohibits campaign materials from containing "insults or slander in relation to official persons of the Republic of Belarus and other candidates". A competing candidate found in violation of this provision can have his or her registration cancelled. The Venice Commission noted that in Belarus the protection of the

[19] OSCE/ODIHR parliamentary election observation mission report, 2012, p. 13.
[20] See http://humanrightshouse.org/Articles/15978.html.
[21] See http://humanrightshouse.org/Articles/19095.html.
[22] See http://humanrightshouse.org/Articles/16213.html.
[23] See http://humanrightshouse.org/Articles/18584.html.

reputation or rights of others is used to "limit, diminish, or suppress a person's right to free political expression and speech".[24]

47. The protection of the "reputation of the Republic" is also a severe restriction on free debate as to the quality of the Government. Article 369-I of the Criminal Code makes it a criminal offence to discredit Belarus by giving international organizations "false information" on the situation in the country or the legal status of its citizens.

48. The Special Rapporteur is concerned that these legal provisions are aimed at allowing the Government to control and sanction what is communicated during electoral processes, which is antithetical to the conditions for free and fair elections.

B. Freedom of association

49. The right to freedom of association is fundamental to democracy because it enables people to found political parties to represent their views and put forward candidates in elections. It is also essential to the right of non-party citizens to collectively participate in electoral processes, to promote their views, to influence Governments and to organize observation of elections (see A/HRC/20/27, paras. 12 and 13).

50. In Belarus, as previously noted by the Special Rapporteur the scope and limits of freedom of association are restricted in various provisions by the criminal and administrative codes as well as by overtly restrictive registration regulations and their draconian application. A genuine right to associate should, as a principle, be as simple as possible, with State interference possible only when prescribed by law and complying with the strict tests of necessity and proportionality in a democratic society (see A/HRC/20/27, paras. 16, 17 and 84 (e)).

51. Some regulations are in evident contradiction with the international human rights obligations of Belarus, such as article 193-1 of the Criminal Code, which criminalizes activities by unregistered organizations. Article 15 of the Law on Associations states that registration can be refused in cases of violation of the registration formalities "if such infringements are irreversible". On this basis, non-governmental organizations are frequently denied registration for minor, easily remediable faults in complex registration documentation.

52. The Special Rapporteur is concerned that the threefold oppressive framework, consisting of a permissive registration regime, the selective denial of registration and the criminalization of functioning without registration, is also aimed at hampering the participation in elections of independent associations and opposition political parties.

53. Belarusian non-governmental organizations engaged in monitoring elections regularly face difficulties. One serious example is that of warnings issued by the Ministry of Justice to the Belarusian Helsinki Committee, which could lead to the withdrawal of registration. The Ministry claimed that the Committee "depicted a distorted view of the current state of affairs in the country" and thereby violated legislation on non-governmental organizations (see A/HRC/18/19, para. 29). In fact,

[24] OSCE/ODIHR and Venice Commission, joint opinion on the electoral legislation of the Republic of Belarus, 2006. Available from www.osce.org/odihr/elections/belarus/25360, para. 67.

the Committee had merely reported on its monitoring of elections. The Special Rapporteur is particularly worried about reports indicating further harassment of this non-governmental organization, including legal proceedings aiming at its dissolution.

54. Viasna is another case of a non-governmental organization engaged in election monitoring. Registered by the Ministry of Justice on 15 June 1999, Viasna arranged for some 2,000 people to observe the presidential elections of 2001 (see CCPR/C/90/D/1296/2004). On 2 September 2003, the Ministry requested the Supreme Court to dissolve Viasna. As noted by the Human Rights Committee, dissolution was "based on perceived violations of the State party's electoral laws carried out during the association's monitoring of the 2001 presidential elections" (ibid., para. 7.4). The Committee found a violation of the right to freedom of association and requested an appropriate remedy, including the re-registration of Viasna and compensation, neither of which has been complied with.

55. The Special Rapporteur urges the authorities to support and encourage national non-governmental organizations that carry out electoral monitoring and voter education, which are essential for free and fair elections.

Political parties

56. Articles 4 and 5 of the Constitution imply a provision for the right of people to create political parties and be united in these parties without any compulsory membership. Articles 2 and 4 of the Law on Political Parties reaffirm the right of Belarusians to form political parties based on freedom of association, democracy, rule of law, transparency, self-governance and the equality of all political parties and unions. Regulations on the registration of a political party are restrictive and complicated, however.

57. Article 23.24 of the Code on Administrative Offences prohibits receiving, as well as storing and transferring, "gratuitous" foreign aid and provides a list of activities that cannot be funded from abroad, including financing of political parties, unions (associations) of political parties or preparation and conduct of elections, organization or conduct of meetings, street processions, demonstrations, picketing, strikes, production or distribution of agitation materials, conduct of seminars or any other type of political and mass agitation work with the population.

58. It is worrying that, in Belarus, the customary activities of a political party impede its ability to receive foreign funding. In addition, the vague definition of what constitutes political activities invites arbitrary, selective and politicized application and, again, self-censorship of activities. Transparency of party funding is a legitimate demand, but creating rules that bar parties from receiving grants from abroad for public activities directly affects their ability to participate in elections.

59. There are 15 registered political parties in Belarus. Of them, 14 managed to pass the compulsory re-registration process in 1999 and 1 was registered in 2000. Owing to the risk of criminal prosecution as an unregistered organization, political

associations choose to register as non-governmental organizations.[25] Consequently, they cannot present a party candidate in elections, only individual candidates.

60. Repression of human rights defenders and political activists in the aftermath of the presidential elections in 2010 affected the work of many non-governmental organizations. Owing to numerous searches and confiscation of equipment, some were deprived of technical bases for their activities. In-country activities of international non-governmental organizations were also limited, as in the case of expulsion of, or denial of entry to, members of the Committee on International Control over the Human Rights Situation in Belarus, a union of 30 international non-governmental organizations established on 27 December 2010, although they had all the necessary legal documentation.[26]

61. The Special Rapporteur has noted that several investigations relating to a number of criminal cases in the aftermath of the elections in 2010 are continuing against parties and associations and preventive detention of their members continues to be regularly practised.[27]

C. Freedom of peaceful assembly

62. While the Special Rapporteur notes with satisfaction that certain groups were allowed to hold indoor assemblies, including on the death penalty, he has been informed during his consultations that the Belarusian authorities do not allow any kind of public assembly if it aims at raising awareness about human rights issues or participating in an electoral process. The authorities regularly prohibit peaceful gatherings and use "hooliganism" or similar charges of misdemeanour to detain, intimidate and silence citizens (see A/HRC/23/52, para. 82).

63. Even before the elections in 2010 and 2012, the Law on Mass Events of 1997 unnecessarily restricted freedom of assembly. Its definition of a picket (public expression) even includes hunger strikes.

64. The Human Rights Committee holds that a public assembly is the "coming together of more than one person for a lawful purpose in a public place, and therefore consists of more than one individual" (CCPR/C/50/D/412/1990, para. 7.6). In Belarus now even an action by a single person may fall under the Law on Mass Events. The limitations on freedom of peaceful assembly notwithstanding, some individuals continue to risk fines and imprisonment to make their views public.

65. Furthermore, the Law on Mass Events requires all organizers to apply for permission. According to international human rights standards, the exercise of the right to freedom of assembly should not be subject to previous authorization; at most it should be subject to a prior notification procedure only for large assemblies or for assemblies where some degree of disruption is anticipated (see A/HRC/23/39, para. 52).

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[25] Amnesty International, "What is not permitted is prohibited: silencing civil society in Belarus" (London, 2013), p. 6. Available from www.amnesty.org/en/library/asset/EUR49/002/2013/en/ee200280-5735-435c-b8cd-4a72add1ebf4/eur490022013en.pdf.

[26] See www.hrw.org/news/2011/03/17/belarus-prominent-human-rights-defender-expelled.

[27] Legal Transformation Centre and Assembly of Pro-Democratic NGOs, "Freedom of association and legal status of non-commercial organizations in Belarus, annual review 2011". Available from www.lawtrend.org/en/data/1101/.

66. After the elections in December 2010, when thousands were dispersed by riot police (see paras. 73-79 below) and hundreds arbitrarily detained, Belarus took further worrying steps towards a repressive legal system de facto banning the right to peacefully assemble. The amendments to the legislation on mass events in November 2011 toughened responsibility for any violation. They established new bureaucratic procedures and expanded the opportunity for prohibitive and restrictive measures to be introduced.

67. There is now an absolute ban on peaceful spontaneous assemblies, simultaneous assemblies and counter-demonstrations and restrictions on the time and place of meetings offer numerous opportunities to restrict events, in violation of international human rights norms and standards (see A/HRC/20/27, paras. 30, 91 and 92, and A/HRC/23/39, para. 59). The provisions of the law that determine the requirements for organizers, participants and the procedure for receiving authorization are discriminatory. The inclusion in the definition of mass events of actions by a single person or actions without the involvement of many people lacks reasonable grounds (see A/HRC/23/52, para. 83).

68. Articles 5 and 6 of the Law on Mass Events establish excessive requirements on organizers in the process of authorization of assemblies. The organizers must indicate in their application measures for securing public order and safety, provision of medical services and the cleaning of the space, again in violation of international human rights norms and standards (see A/HRC/20/27, para. 31, and A/HRC/23/39, para. 57). The law does not include provisions as to what specific measures would satisfy such requirements.

69. Article 15 of the same law provides for the immediate liquidation of any organization that fails to abide by the vague notions of the legislation or the assembly of which violates "the legal interests of citizens, organizations, or State or public interest".

70. Article 293 of the Criminal Code criminalizes organizers and participants of mass disorder that result in "arson, violence against persons, pogroms, destruction of property, and armed resistance to authorities". After the presidential elections in December 2010, a number of people were prosecuted on the basis of this article and article 342 of the Criminal Code, which imposes sanctions for "serious breach of public order".

71. During the parliamentary elections in 2012, according to the Law on Mass Events, opposition candidates were unable to set up pickets for collecting signatures for the nomination of candidates. In the cases of Leu Marholin, Mikhail Vasilieu, Hanna Kurlovich, Aliaksandr Artsybashau, Pavel Vinahradau and Yahor Viniatski, a court considered such picketing to be a violation of the Law on Mass Events.[28]

72. Not only restrictive by nature, the Law on Mass Events contradicts the Electoral Code. The Human Rights Committee noted that limiting pickets to certain predetermined locations, regardless of the kind of manifestation or the number of participants, raised doubts as to the necessity of such regulation under the obligation of Belarus to ensure the right to freedom of expression for all (see, for example,

[28] Legal Transformation Centre, "Restrictions on the freedom of assembly in Belarus: judicial practice on administrative cases in 2012", sections VI-H and VI-K. Available from http://lawtrend.org/en/content/foundation/news/Monitoring-report-Restrictions-freedom-assembly-Belarus-court-practice-on-administrative-cases-2012/.

CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010). Furthermore, imposing penalties for "participation in an unauthorized meeting" restricts the freedom of peaceful assembly as well as the right to impart information (see, for example, CCPR/C/85/D/1022/2001, para. 7.2, and CCPR/C/101/D/1604/2007, para. 10.4).

73. The Special Rapporteur is concerned that these restrictions severely curtail the right to freedom of peaceful assembly ahead of elections. In any country, on election night spontaneous assemblies can happen; such restrictive measures make it impossible for the authorities to maintain public order without using excessive force and arresting people. The Special Rapporteur urges the authorities to take measures to facilitate and protect such assemblies.

74. Included in such a policy should be the training of security forces. Independent monitoring undertaken in 2012 shows that police officers are not well informed about the freedom of peaceful assembly and their function to protect it.[29] Their actions are often aimed at stopping an event and detaining participants. Little consideration is given as to whether the participants present a real danger to public order. The Special Rapporteur urges the authorities to ensure that law enforcement and administrative officials are properly trained regarding the facilitation and protection of the right to freedom of peaceful assembly (see A/HRC/20/27, para. 84 (h)).

75. All electoral stakeholders should be able to exercise their right to assemble during an electoral process without the threat of arrest. The Special Rapporteur urges the authorities to ensure that cases of pressure, intimidation or detention of voters or candidates are investigated in a prompt, impartial and thorough manner, with perpetrators held accountable and victims able to obtain redress.[30]

D. Arbitrary detention

76. Arbitrary administrative and criminal detention, as already reported by the Special Rapporteur, is used as a means to intimidate, harass and punish individuals, especially when they are engaged in undesired activities (see A/HRC/23/52, para. 70). Journalists, lawyers, human rights defenders and members of political parties report being detained, beaten in the process and charged with speculative administrative and criminal offences.

77. The presidential elections of 2006 and 2010 were marred by pre-election and post-election day detentions, including of representatives of national observation groups and political candidates, and by instances of pressure and harassment against opponents and activists, including increased surveillance of candidates, and the misuse of administrative resources to promote the incumbent.[31]

[29] Legal Transformation Centre, "Restrictions on the freedom of assembly in Belarus".

[30] OSCE/ODIHR parliamentary election observation mission final report, 2012, p. 11.

[31] OSCE/ODIHR Election Observation Mission, "Republic of Belarus, presidential election 19 March 2006, final report" (Warsaw, June 2006), pp. 13, 20 and 29; OSCE/ODIHR election observation mission, OSCE/ODIHR presidential election observation mission, final report, 2011, p. 2.

78. In 2006, some 400 verified campaign-related incidents were reported where opposition staff were harassed, fined or arrested.[32]

79. In 2010, hundreds of riot police violently dispersed some 5,000 demonstrators who had gathered for a post-election evening demonstration, arresting many, including seven presidential candidates, their campaign managers and proxies and hundreds of activists, among them journalists, civil society representatives and foreign citizens. The President announced that 639 people had been arrested and confirmed that the State Security Committee was interrogating rival presidential candidates, whose whereabouts was not known for two days.[33]

80. The Human Rights Committee and the Working Group on Arbitrary Detention found Belarus to be in breach of the International Covenant on Civil and Political Rights because of the following rules on detention: the law permits pretrial detention based solely on the gravity of the charges raised against a detainee (see CCPR/C/86/D/1100/2002 and CCPR/C/99/D/1502/2006). Under article 126 (4) of the Criminal Procedure Code, detention on remand can be authorized by the Prosecutor, the Ministry of the Interior, the Chair of the State Security Committee or the Deputy Chair of the State Control Committee/Director of the Finance Investigation Department. A detainee may appeal to the court against detention. The court can check the legality of the procedure and the reasons for detention, but, in practice, it does not use the full scope of its powers. Accountability for offences typically committed by plain-clothes police is rare, as in the case of mass detentions at the club Yo-ma-yo in 2012.[34]

81. The Working Group on Arbitrary Detention found the detention of Ales Bialiatski, head of Viasna, to be arbitrary, in contravention of article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights. The Working Group emphasised that "the adequate remedy is to release Mr. Bialiatski and accord him an enforceable right to compensation pursuant to article 9, paragraph 5" of the Covenant (see A/HRC/WGAD/2012/39). Viasna undertakes countrywide election observation.

82. The Special Rapporteur urges the authorities of Belarus to ensure that the detention of an individual should be ordered only by a judge, and that pretrial detention is applied only in exceptional circumstances.

E. Independence of judges and lawyers

83. The Human Rights Committee has regularly expressed concern at the failure of Belarus to respect the obligation of judicial independence, given that the Code on the Judicial System and the Status of Judges of 2007 sets out all the fundamental principles necessary for safeguarding judicial independence (see CCPR/C/78/D/814/1998 and CCPR/C/86/D/1100/2002). The dependence of the judiciary on the executive branch is rooted in the imbalance between the branches in the powers vested in the Constitution of 1996, however. There remains a concern

[32] OSCE/ODIHR presidential election observation mission, 2006, p. 13.

[33] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011" (Warsaw, November 2011), para. 45.

[34] Legal Transformation Centre, "Restrictions on the Freedom of Assembly in Belarus", sect. VI-F.

that the President continues to appoint, dismiss and determine the tenure of judges (see CAT/C/BLR/CO/4, para. 12).

84. In consultations in Vilnius and Kyiv in 2012 and 2013, the Special Rapporteur learned that many Belarusians do not trust the judiciary and believe that it places the interest of the authorities above protecting the rights of citizens.

85. During an electoral process, the independence and impartiality of the judiciary play a particularly important role because they represent a guardian for the rule of law and democratic principles, including electoral rules and proceedings.

Appeals

86. The amendments to the Electoral Code notwithstanding, mechanisms to review complaints and appeals still do not provide an effective remedy, in contradiction to articles 2 and 8 of the Universal Declaration of Human Rights and article 2 of the International Covenant on Civil and Political Rights.

87. Complaints against decisions of election commissions can be lodged with higher commissions. Limited types of decisions can be appealed to courts, including the appointment of members of election commissions, omissions in voter lists, decisions of the Central Election Commission, denial of candidate registration and invalidation of elections. Appeals, depending on their nature, should be adjudicated within three to five days. In most cases, no redress is available to stakeholders if their rights are infringed during the electoral process. The decision of the Commission announcing election results cannot be subject to appeal in the courts.[35]

88. Following the presidential elections in 2006, two presidential candidates, Aliaksandr Kazulin and Aliaksandr Milinkevich, filed requests to the Central Election Commission to invalidate the elections. Both requests were rejected. They sought to challenge the results of the elections before the Supreme Court, but the Court ruled the challenges inadmissible.[36]

89. During the presidential election in 2010, the Central Election Commission received 421 complaints, proposals or requests for clarification before election day. Only five resulted in a resolution, namely with decisions against the complainants, and without appropriate legal reasoning as to their rejection. Of the additional 120 complaints relating to the election received by the Prosecutor's Office and 147 complaints sent to local administration bodies, none were resolved.[37]

Due process and fair trial

90. During the presidential elections in 2006 and 2010, there were concerns about the right to a competent, independent and impartial tribunal. Foremost was the pervasive influence of the executive in matters normally reserved to the purview of the courts. The role of the prosecutor in Belarus goes beyond that of criminal prosecution, including authorizing arrests and general supervision over legality in society. The close relationship between the prosecutor and the judge gave rise to suspicions of judicial bias regarding legal rulings and sentencing in the trials relating to the elections in 2006 and 2010. The presence of Ministry of the Interior

[35] OSCE/ODIHR parliamentary election observation mission final report, 2012, p. 16.
[36] OSCE/ODIHR presidential election observation mission final report, 2006, p. 25.
[37] OSCE/ODIHR presidential election observation mission final report, 2011, pp. 16 and 17.

and, reportedly, State Security Committee personnel at the trials may have influenced the judges, the lawyers and, in general, the conduct of the proceedings.[38]

91. The administrative court hearings relating to the elections in 2006 and 2010 were undertaken either in the judge's room, or in closed sessions, with access granted only by court summons. During the hearings, the accused were sentenced either to pay administrative fines or were incarcerated for between 10 and 15 days for participating in unauthorized mass events.[39]

92. All 41 defendants in the trials that were held following the presidential election in 2010 were found guilty in the first instance proceedings. No judgement was altered on appeal. Eleven defendants were given non-custodial sentences, while 30 received custodial sentences, ranging from two to eight years' imprisonment. Twenty-eight of the convicted persons, including three former presidential candidates, remained in prison after their trials.[40]

93. Similar concerns about fair trials were raised in independent monitoring of administrative trials in 2012, including limitations on the right to a public hearing; neglect of procedural rules; a selective approach to the examination of evidence, leading to accusatory bias; violation of the principle of equality of arms; and violation of the presumption of innocence.[41]

Reparation and effective remedy, including rehabilitation

94. As discussed herein, the criminal legislation contains provisions that are not in line with internationally recognized standards. These provisions were widely used in criminal cases brought against some of the participants in events following the election in 2010. This has since affected their ability to further participate in political processes because people who have been convicted of a criminal offence are not allowed to stand as candidates for public office following their release from prison as long as they have a criminal record.[42] All political prisoners should not only be released and compensated, but also fully rehabilitated, with their criminal record removed, in accordance with international human rights law.

Independence of lawyers and access to independent counsel

95. The lack of independence of lawyers was noted in 2001 by the Special Rapporteur on the independence of judges and lawyers while visiting Belarus, when she spoke of a pattern of intimidation and interference in the discharge of the professional functions of lawyers (see A/HRC/17/30/Add.1, para. 101).

96. Lawyers reportedly face interference, harassment, intimidation or other consequences for defending the interests of their clients and overall interference with lawyer-client confidentiality. Impediments to gaining access to and practising the legal profession are further compounded because lawyers are prevented from forming an independent bar association.

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[38] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011", para. 14.

[39] OSCE/ODIHR presidential election observation mission final report, 2011, p. 23.

[40] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011", para. 11.

[41] Legal Transformation Centre, "Restrictions on the Freedom of Assembly in Belarus", sect. IV-B.

[42] Articles 60 and 98 of the Electoral Code and article 33 of Law No. 204-Z on Public Service (2003).

97. Cases linked to electoral processes are seen by the authorities as especially sensitive, as reflected by the lawyers disbarred following the presidential elections in 2010. Aleh Ahejeu, Tatsiana Ahejeva, Uladzimir Toustsik, Tamara Harajeva, Pavel Sapelka and Tamara Sidarenka lost their licences while representing defendants in connection with the demonstration that was held after the election in 2010. Such interference in the independence of the legal profession also denies defendants the right to access of a counsel of their choice.

98. The Special Rapporteur is concerned that these continuing limitations to the right to equality before the courts and to a competent, independent and impartial tribunal result in the failure of the State to guarantee the right to a fair and due process, including the presumption of innocence and access to an independent counsel.

F. Torture and other cruel, inhuman or degrading treatment

99. The use of torture and other ill-treatment by law enforcement officials reportedly persist in order to, among other things, extort confessions that are then used as evidence in court (see CCPR/C/106/D/212/2011, para. 11.2). This is despite the fact that torture is prohibited under article 25 of the Constitution and reflects the gap between the legislative framework and its practical implementation. The Committee against Torture notes that articles 128 and 394 of the Criminal Code do not criminalize torture in accordance with article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see CAT/C/BLR/CO4, paras. 10 and 16).

100. In the run-up to the presidential election in 2006, a presidential candidate, Aliaksandr Kazulin, was detained and charged with two offences under the Criminal Code. Serious allegations were made that he and an non-governmental organization activist were ill-treated while in detention, including reports of severe beatings and other forms of cruelty.[43]

101. During the trials following the presidential election in 2010, allegations of ill-treatment of detainees while in police custody were raised. Judges failed to follow up on allegations by defendants that statements made were obtained under duress, intimidation, inhuman treatment and possibly torture. Defence motions to exclude evidence based on the alleged maltreatment were ignored or denied.[44]

102. The urgent concerns about cases of torture and ill-treatment in the aftermath of the presidential election in 2010 were raised jointly and separately by several special procedure mandate holders concerning the situation of former presidential candidates Andrei Sannikau, Uladzimir Niakliaeu, Aliaksei Mikhalevich and other activists (see A/HRC/17/27/Add.1, para. 249, and A/HRC/19/61/Add.4, paras. 26-29).

103. The practice of arrests carried out by plain-clothes police officers or mistreatment by masked people makes it impossible for perpetrators to be identified later when complaints of ill-treatment are raised (see CAT/C/BLR/CO/4, para. 8). This means that no genuine investigation and effective remedy is available to victims and there is a lack of accountability and impunity for the perpetrators.

[43] OSCE/ODIHR presidential election observation mission final report, 2006, p. 26.

[44] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011", para. 19.

104. In response to allegations related to the aftermath of the presidential election in 2010, the Committee against Torture raised concerns about numerous, consistent reports that detainees were frequently denied basic fundamental legal safeguards, including prompt access to a lawyer and a medical doctor, and the right to contact family members (see ibid., para. 6).

105. The Special Rapporteur believes that there is an urgent need for a high-level public announcement on the prohibition of torture, for measures to be taken to effectively prevent acts of torture and ill-treatment by State officials and for the conduct of prompt, impartial and full investigations and the prosecution of alleged perpetrators.

VI. Election observation

106. Article 13 of the Electoral Code provides for domestic and international observation of the election process. Both domestic and international observers are, however, subject to regulatory and practical limitations that, the minor improvements in 2011 notwithstanding, make it impossible to observe the entirety of the process.

International observers

107. In the past, Belarus has invited several international election observer missions. The two largest teams have been the OSCE/ODIHR missions, which worked in cooperation with the parliamentary assembly observers from both OSCE and the Council of Europe, and those separately delegated by the Commonwealth of Independent States and its parliamentary assembly.

108. The findings of the two teams were quite different. The Commonwealth of Independent States missions published summaries that invariably found the elections in Belarus to be in compliance with democratic norms; open and transparent; and the expression of the free will of the citizens, using this same wording for both the parliamentary elections in 2012 that resulted in a parliament with no opposition members and for the presidential election in 2010 that saw the exclusion and subsequent arrest of several presidential candidates and the detention of hundreds of others in the ensuing protests. OSCE/ODIHR issues detailed recommendations based on long-term observations and a uniform expert methodology that is internationally acknowledged as a standard. In the parliamentary elections in 2012, the mission found that many OSCE commitments, including citizens' rights to associate, to stand as candidates and to express themselves freely, were not respected, some improvements to the electoral law notwithstanding.[45] After the presidential election in 2010, OSCE/ODIHR stated that "Belarus has a considerable way to go in meeting its OSCE commitments for democratic elections".[46]

109. While it is commendable that international observers are regularly invited to Belarus, the leaders of the country and the State media do not give equal weight to the diverging evaluations, preferring to repeat only the findings that endorse the

[45] OSCE/ODIHR parliamentary election observation mission final report, 2012, p. 1.

[46] OSCE/ODIHR presidential election observation mission final report, 2011, p. 1.

process and the results and dismissing critical international expertise as political and anti-Belarus.

Domestic observers

110. Representatives of public associations, political parties, citizens' groups, labour collectives and media outlets have the right to be accredited as domestic observers, to attend sessions of commissions with which they are registered and to observe election day proceedings. In an amendment to the law in 2011, the registration of observers was eased by lifting the previous requirement that a party or public association needed a registered local unit in order to be accredited.

111. Guarantees of direct and effective opportunities to monitor voting, the count and the tabulation of results are missing, recommendations to that effect by all OSCE/ODIHR missions notwithstanding. The law does not provide observers with the right to receive certified copies of the results protocol. There are no legal specifications for the observation of signature verification, for review of the voter lists, or for witnessing the handover of the results protocol from precinct commissions to higher levels; neither are the rights of observers specified for the actual compilation of the results. There is thus no concept of the need for observers to be present at these crucial moments.

112. The law is consistently interpreted in a restrictive way by the electoral commissions, the composition of which to this date remains the prerogative of the local and State authorities. As a result of the power of the executive to choose members of the commissions, representatives of opposition political parties accounted for less than 1 per cent of the electoral commissions in the elections in 2012.[47] Notwithstanding a resolution passed by the Central Election Commission for the presidential elections in 2010, providing that observers should be given a real opportunity to observe the counting procedures, observers reported that they were not given a clear view of the count.[48]

113. The predominantly pro-government composition of the electoral commissions is also decisive for the registration of observers. Although a total of 36,096 domestic observers registered in the most recent presidential elections, the most active alliance of independent observers, Human Rights Defenders for Free Elections, was able to deploy only 600 observers, while 20,715 observers were nominated by organizations pledging support to the incumbent President.

114. That observers were not given a meaningful opportunity to observe the process was one of the main reasons why OSCE/ODIHR and most international analyses deemed consecutive elections in Belarus as lacking an honest count, in the sense of the requirements for voting described in paragraph 7.4 of the Document of the Copenhagen Conference on the Human Dimension of the Conference on Security and Cooperation in Europe.

[47] Human Rights Defenders for Free Elections, "Election to the Chamber of Representatives of the National Assembly of Belarus of the 5th Convocation, Republic of Belarus", final report, 23 September 2012.

[48] OSCE/ODIHR presidential election observation mission final report, 2011, p. 18.

VII. Conclusions and recommendations

115. **The Special Rapporteur concludes that the rights to vote and to be elected at genuine periodic elections are not guaranteed in Belarus. Belarus today is, and has been since 2004, the only State in Europe with a parliament without an opposition.**

116. **Information gathered from primary sources suggests overlapping, systematic and purposeful violations of the human rights underlying free and fair elections. With recourse only to an election management body that is not independent of the Government, a system of restrictive regulations and constant persecution of independent organizations and candidates, elections have been transformed into ceremonial tools used to perpetuate power.**

117. **The Special Rapporteur is grateful to all those who provided detailed first-hand information. He regrets that the Government did not avail itself of this opportunity. He reiterates his readiness to work with the Government and continues to offer his support to civil society. He will continue to request an official visit to the country before the end of 2013 and will seek a meeting with Belarusian officials at the time of the sixty-eighth session of the General Assembly.**

118. **With the next presidential elections scheduled for 2015, the Special Rapporteur recommends that the Government of Belarus review and fully implement the recommendations made by the United Nations High Commissioner for Human Rights in her report in 2012 (A/HRC/20/8), those he made in his report to the Human Rights Council at its twenty-third session (A/HRC/23/52) and those made over time by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation. In addition, the Special Rapporteur recommends that the Government:**

(a) **Ensure that the process of electoral legislative reform is undertaken transparently and inclusively, in full consultation with a broad number of stakeholders, even if draft legislation has already been put before the parliament, and in time for its full and effective implementation during the presidential elections in 2015;**

(b) **Guarantee independent election commissions through pluralistic composition;**

(c) **Ensure a transparent vote count, including for its full and open observation by election commission members and other stakeholders;**

(d) **Repeal the law making it a criminal office to criticize public figures or the Republic;**

(e) **Guarantee non-interference by the Government in the media, and a pluralistic, transparent and demonopolized ownership of broadcasting;**

(f) **Reform and improve the system of judicial self-governance with a view to freeing it from executive/presidential decision-making on issues such as discipline, benefits and bonuses, selection, promotion and disciplining of judges;**

(g) Reform the bar association, guaranteeing its independence in line with international standards;

(h) Ensure the adversarial nature of trials and the principle of equality of arms and ensure respect for the presumption of innocence and the right to defence;

(i) Expedite legislative reforms to ensure the absolute prohibition of torture and establish effective safeguards against torture and ill-treatment in law and practice, initiate prompt, impartial and thorough investigations into allegations of torture and ill-treatment and prosecute when warranted, without delay, and publicly call for the absolute prohibition of torture;

(j) Ensure thorough consideration of all accusations of torture made in the courts and, if confirmed, the inadmissibility of evidence obtained in such a way;

(k) Implement training and capacity-building for the police, the national security services and military personnel on international human rights standards;

(l) Investigate the cases of lawyers who represented individuals detained in connection with the events of 19 December 2010 and reinstates their licences;

(m) Conduct prompt, impartial and thorough investigations, as well as prosecution and punishment for any acts of intimidation and violence against human rights defenders and journalists;

(n) Repeal article 193.1 of the Criminal Code that criminalizes public activities without official permission;

(o) Ensure full rehabilitation for individuals who have been politically prosecuted and convicted, including the removal of any criminal record and limitations on their participation in political life and elections;

(p) Eliminate the permission-based registration procedure for assembly, association and the press;

(q) Cancel registration of foreign grants and international technical assistance and the list of purposes for which "gratuitous" foreign aid can be used;

(r) Amend the Law on Mass Events in Belarus to comply with the constitution and international standards;

(s) Recognize and extend full cooperation to the mandate holder by engaging in dialogue and facilitating a country visit by the end of 2013.